IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

JUST ENTERPRISES, INC., Plaintiff,	)	
vs.	)	No. 06-CV-05023-JCE
	)	June 18, 2009
(888)JUSTICE, INC., JON L. NORINSBERG, Defendants.	)	Springfield, Missouri

PLAINTIFF'S CLOSING ARGUMENT
BEFORE MAGISTRATE JUDGE JAMES C. ENGLAND
UNITED STATES DISTRICT COURT

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JUST ENTERPRISES v. (888) JUSTICE, INC.

CASE NO. 06-CV-05023-JCE

JUNE 18, 2009

PLAINTIFF'S CLOSING ARGUMENTS

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MR. KASS: Thank you, Your Honor. Some light reading for this morning.

Well, I want to again thank you for the time you put in this week. And I promised you we'd be done Thursday, not Friday, so -- I know this type of case is not always easy to sit through, reading of depositions and talking about an area of law that probably most of you have never discussed in your life. It can get very confusing. Something that seems like something happened on the stand, oh, that might be completely unimportant or it could be very important, you guys would have no way or really knowing. So I appreciate you sitting through this even though this isn't exactly going to be the topic of romance novels or something.

You know, I watched some things on the Discovery Channel with my daughter, Naomi, and we watch these -- I don't know if you guys have ever seen the Discovery Channel but they have these shows that are like extreme animals and they really have all kinds -- they have animals you've never seen in your life before that can do all kinds of neat things. And, actually, not long ago we're watching one of these shows and

something that I saw with her reminded me of this case. It was this animal in one of these shows that when it's being attacked by a predator, what happens is the animal can change all kind of colors back and forth, it can shoot liquid out of its mouth, it can flap its wings, and the predator thinks, "Oh, my God, me the predator, I'm the one who's in trouble here, I'm the predator that's to be scared off."

Well, the truth is, the animal really has no defenses. The animal doesn't actually have an ability to attack back at the predator. If the predator wouldn't be scared off, then the animal would be in trouble.

And that is -- this reminds me of this case because most of this case has been a side show. Most of this case has been about issues that have nothing to do with this case. You've read the instructions and we'll go through some of these, but you've heard so much information in this case that has nothing to do about the real, very narrow issues in this case.

The defendants have tried to distract you in this case. They've tried to, you know, do a look-over-here approach to this case. And I have to commend them, they've done a very good job. They have been able to focus this case on things that are not at issue. I'll even give you some examples here.

This case is not about whether everyone on the

planet has ever heard of 1-800-JUSTICE. You've never heard me get up in this courtroom -- I told you in my opening statement, I think, there's no dispute over this. 1-800-JUSTICE, I never heard it before I was hired by my client. I don't know of anybody that's heard of it. They can quote from original lawsuits and all this stuff. My client did not come here to court to try to prove that 1-800-JUSTICE is well known. This is a color-changing event. This is a liquid-spraying event. It has nothing to do with this case even though they had an expert to come all the way down from Chicago to tell you that it wasn't well known.

There was incredible amount of time up here on the screen trying to prove or disprove how much is spent on advertising. Who cares? It's not an issue in this case. There's no requirement to spend $100,000 on advertising to have a valid and enforceable trademark. We've just gone through the instructions but you didn't see anything about that.

Then you heard probably an hour or two on this case really getting honed in on whether -- when and if this mark was used in the 1990s. This is another one of those, who cares? This is an intent to use application. You have to understand something. When somebody files a use application, they've said that they've used the trademark and then they go seven or eight years without using the trademark, so then

you've got a problem. This was an intent to use application and the Patent and Trademark Office didn't close the file when the FCC proceedings were going on and when Patients Plus came in. They didn't do any of that. The Patent and Trademark Office said, "Okay, let's wait until all that stuff is done," and then registration came from that.

The PTO did not reject its application knowing that this was filed in '92 and there was a use date filed at least as early as March 2003. The Patent and Trademark Office didn't say, "Well, gee, you filed this application in 1992 and you're telling us your first use date is 2003, well, sorry, we can't register it." That's not what happened here.

And all these FCC items that were going on, the two FCC proceedings and the Patients Plus trying to steal the trademark at the Trademark Office, my client prevailed on those issues. This is a non-issue in this case.

And there's never been any dispute in this case that my client has continually used the trademark 1-800-JUSTICE since 2003 before Mr. Norinsberg ever even acquired the phone number (888) JUSTICE in 2004. To suggest that Just Enterprises abandoned its trademark rights completely twists the facts around in this case.

Remember in the beginning of jury instructions that you heard at the beginning of the case -- and there was some allusion to it today -- an intent to use application that

results in a federal registration means that the owner of the trademark gets to go back from their first use date to the time that the application was filed. It gets in line before anybody that didn't come before them. And it makes sense. Can you imagine if you could file an intent to use application which puts -- it's a public record, puts the world on notice, "Hey, I'm going to use 1-800-JUSTICE." Then everybody can look it up and say, "I really like that mark. I think I'm going to use it first." It would be impossible to have that kind of system.

Another distraction issue in this case was the blocking of the phone number. Again, we're talking about this 1990s period when there's an intent to use application pending, when there's FCC proceedings pending, when there's Patients Plus trying to steal the 1-800-JUSTICE trademark. There's never been any blocking of this phone number after the business got going in 2003 after the federal registration. That's the period of time that is important in this case. The distraction, this flapping going on in the 1990s, they did a great job showing, "Oh, you thought it was used in 1992, you didn't think it was used in '92," and, you know, "One time you said it was," that's just all a big distraction here. This registration happened in 2003. This is another, who cares?

The fact is, there's never been any argument in this case. In fact, I remember when Mr. Norinsberg did his opening

statement, do you realize he did not say the phrase or the term (888) JUSTICE once in his opening statement? That was the first time I said this case is going to be about distractions. They don't want to talk about (888) JUSTICE. He wants to talk about the 1990s.

There's no dispute in this case that my client not only began using 800-JUSTICE in at least as early as 2003 and had a registration in 2003, long before Mr. Norinsberg ever even purchased the phone number (888) JUSTICE.

There was some detailed discussions going back and forth, you didn't use the circle R, you did use the circle R. This is only -- you can go through your instructions. You don't have to take my word for it. This is only relevant when somebody wants to recover damages from someone. The person who you're trying to recover damages needs to be on notice in order to recover damages that they were doing something wrong. There's two ways, as you'll see in your instructions. You can put a circle R and that puts the entire world on notice, or a person could have actual notice. In other words, if you already know that the person has the trademark, you don't need to be told with a circle R that they have the trademark. Mr. Norinsberg stood up here in open court and told you that he knew about the trademark. I mean, he called to try to maybe use it in New York even. He knew about this trademark. The circle R, it's another distraction.

And, in fact, I mean, the truth is, while the circle R wasn't used all the time, I mean, obviously, you saw sometimes it was used and sometimes it wasn't. You don't need to take either lawyer's word for that. We've put it on the board.

Now, this is a real important issue in this case -- I mean, it's a real important distraction that's been going on here about does 800-JUSTICE, is that used as a trademark or just a phone number and is it only licensed as a phone number. There seems to be some confusion here. Of course it's been used as a phone number. Nobody's suggesting in this case it's used as a phone number. It's not an either/or. You can use something as a phone number and you can also use it as a trademark. You saw Mr. Norinsberg's license agreement that he does with his own licensees. He says, "I'm licensing you the phone number," and then you get down, "I'm also licensing you the trademark." When folks advertise this in -- in various publications, you know, they sometimes advertise it as a phone number and sometimes they advertise it as a trademark. Right here it's clearly advertised as a trademark even using the circle R. Everybody's on notice. And sometimes you see people say Call 1-800-JUSTICE or Dial. It's used in both ways. I don't think there's any dispute over that.

And my client obviously uses this mark as a trademark. You know, this 1-800-JUSTICE website, not only

does to say it right up at the front with the first -- by the way, you're not required to keep putting R, R, R. You say it in big front place right up at the front, everybody's on notice. But it was very interesting, they went straight past the branding section of the website and went straight to how it works. It can work as a phone number. But then if you go back to the branding section, if you recall, branding is about your brand name. It's about a trademark. There's no -- there's no dispute over this. It's used as a phone number and it's used as a trademark. It's not just merely licensed as a phone number. And there was lots of other use. You recall these YES! faxes. I mean, right here, "I am interested in 800-JUSTICE" circle R. It's been -- "I'm interested in that trademark." I mean, certainly not being used as a phone number here at the top of the letterhead. It's being used as their trademark. This is our brand name.

Same thing with advertisements that are run. This is being used as a trademark. On the business cards, on the envelopes, on the subscriber license agreement. I mean, this is clearly being used by my client and licensees as a trademark, the logo that was developed. Other licensees, you know, their firm name and 1-800-JUSTICE with the showing that it's a trademark. These are all uses of trademark.

This is another distraction from the case to try to do a look-here. It's not always used. It's used as a phone

number. That's the whole purpose of the business, of course it's used as a phone number. The Trademark Office approves phone numbers all the time as trademarks if they're not just used as a phone number, if they're not just licensed as a phone number. It's got to be both. It's never just the trademark. Obviously there's no point in the trademark if it's not a phone number.

Now, you also heard Mr. Russo's deposition read to the Court. I know that the deposition part of this case is probably the hardest part of the case to sit through. It's not easy for me either. I certainly have seen hours and hours of that in other cases. So you guys got off easy. But this is talking about some guy in 1992, did he use it for six months, did he use it for a year. This is another one of those distractions. We got an intent to use application that that process ends in 2003. Who cares if Mr. Russo used it or not. That's not even part of the important part of this story. He's trying to take your eye off the ball on this.

And, again, I fear that he's doing a good job of it but I'm trying to put things into perspective here and trying to focus this case on the very narrow issues in this case.

Then there was this distraction: Wait a minute, you guys are also doing pro se divorces and mediation services? That must mean it's not a trademark. I don't even know what was going on with that. Fisher Price makes toys. That

doesn't mean it can't put out DVDs and strollers too. Folks often expand in related areas to use their trademark. To suggest that you can't use 1-800-JUSTICE for mediation services, I don't even know where that came from. You won't see it anywhere on the instructions. Again, it's a gotcha. Gotcha on what, I don't know. It's a distraction in this case.

Now, then you heard a lot of testimony: Did you approve the ads? How much were you involved in the ads of your licensees? Did you go over it? Did you make sure this? So what? The question in when you license something is making sure you don't sign up a hooligan law firm or something. You want to make sure that you are signing up a quality law firm. It has nothing to do with the quality of the advertising. That's a complete distraction.

You'll see it in your instructions. When you look at quality of services, it says quality control over the service that is being offered in connection with the trademark, not in the quality control over the advertising. This has come up in numerous cases. People always try to switch this. I got to tell you, just read the instructions for yourself.

But my client -- and nobody's ever testified differently in this case -- when she signs up a law firm, she makes sure they're a member in good standing with the bar and

that she also makes sure that there are no disciplinary actions and she follows up with those law firms. That's about the quality of the service of the law firm, not about the quality of service of the advertising. This is another distraction to try to confuse you in this case.

My favorite distraction in the case, of course, was Singapore. I have no idea what that has to do with anything. So what that a nonlawyer, that a nonlawyer in this case thought somebody was using a trademark and she got calls from the United States. So what that she called her lawyer and said, "Can we do anything about this?" So what? What is that? It's another distraction trying to make my client not look credible in this case, trying to give, Oh, you just go after everybody.

No, this is about whether Mr. Norinsberg is infringing this trademark. This isn't about whether she didn't know her rights legally. Most people who are not lawyers don't understand this stuff. I think that ranges right up there with how much time you spent in Honduras. These are the kind of issues that they want to distract you away from the case. "Well, were you working on your business at that time in the 1990s after you got a divorce? Were you working on that?" Who cares? That is an intent to use application filed in 1992 that the Patent and Trademark Office allowed to go through till 2003.

This entire case was basically an assault to try to make Mrs. Dobrauc look bad by seeing how many inconsistencies they could come up from 17 years ago, from 15 years ago. I don't even remember what I did last week. I mean, you know, the truth of the matter is, people should say they don't know and they shouldn't try to figure it out in their head. It's very understandable that somebody would not remember in detail everything that they said, frankly, even in 2007, two years ago, let alone 15 years ago. I mean, that's understandable.

And, frankly, I'm not up here telling you that when Mr. Norinsberg looked like I might have caught him in something when he said, "Oh, yeah, I had the website," and then I showed him that he didn't have the website on the stand, you know what, chances are he didn't remember. Chances are he didn't remember. Who cares? This case isn't about that.

I mean, I mainly just -- I'm not up here to show that Mr. Norinsberg is a liar. I'm here to show you, Look, it's real easy to show that people sometimes get it wrong and then they testify differently. That happens in every case.

You saw one of the most appalling letters I've ever seen from a lawyer saying something about, Let's pay Mr. Russo to see if he'll cooperate with us. You know, this case is not about whether Mr. Martin is a bad lawyer. The interesting thing, there was never any evidence that Mr. Russo was paid by

my client, or that Mr. Russo's even been in the picture for the last 16 years. When I saw that when I was preparing for this case, I was like, Yuck, what kind of lawyer does such a thing? But that has nothing to do with whether my client owns a valid trademark or whether Mr. Norinsberg is infringing that trademark. That has to do with Mr. Martin being a bad lawyer. And whether my client fired him or not at the time, again, that's a distraction from this case. It's a distraction from this case.

Then there was this time period spent when Just Enterprises was formed with a father-in-law to -- when the -- because a phone company couldn't market the trademark and own the phone number, so they did what the law requires them to do and they set up a separate company. Tried to make it sound like something sinister was going on and they're trying to follow the law. Again, this is to try to say, "I don't want you to think about (888) JUSTICE. I want you to think about things that have nothing to do with this case. Because if you do that, I win, because I can show all kinds of stuff going on over here." That is not what this case is about.

And the FCC twice looked at their ownership of this case when people try to wrestle away 1-800-JUSTICE. Twice looked at that and 1-800-JUSTICE came out on top with the FCC. This is another distraction in this case.

You also heard Mr. Norinsberg claim that he and his

company never used (888) JUSTICE; he just merely licensed the telephone number. Well, first of all, that's absurd. This is his website, (888) JUSTICE right at the top. He's not using it as a phone number, he's using it to market to lawyers to sign up his licensees. A, Mr. Norinsberg uses it. B, his trademark agreement with his licensees -- we went over it, that Section B at the bottom, if you can remember, says, I'm licensing you the phone number and I'm licensing you the trademark. So he doesn't just merely license a 1-800 number or -- yes, you know, it's interesting. I've confused 888 and 800, the Judge did it, there are jury instructions, and Mr. Weems did it once in this case. That's how confusing these trademarks are.

This is another distraction. Mr. Norinsberg has not just merely licensed the phone number, he's put it in his license agreement that it's a trademark, and he uses it on his website. And, remember, he even told you about going to a trade show where he tries to sign up. He uses this trademark. What is he, not talking about it at all? Of course he's using it as a trademark.

And then this was -- my favorite distraction is (888) JUSTICE is not a trademark. Well, he certainly didn't believe that when he filed for an application for (212) JUSTICE, (718) JUSTICE, 800-JUSTICE, (888) JUSTICE, TRIPLE-8 JUSTICE, filing application after application with the Patent

and Trademark Office and then get up and tell you, "I don't think these are trademarks." That is not consistent. He's filed all of these applications and he's trying to confuse you into this thinking that despite these years of activity at the Patent and Trademark Office that, you know what, it doesn't suit my -- it doesn't suit me for this case right now, so now it's real convenient that these aren't trademarks. And it's a distraction. And it's absurd because the Patent and Trademark Office obviously did not agree with him. You saw how many of these things that the Patent and Trademark Office let through.

I could go on with lots of other things here but I think the point has been clear about what the game plan is here. It's to throw as many things against the wall as possible and see if they can convince you to take your eye off the ball and ignore the other evidence about the real issues in this case; whether 800-JUSTICE and (888) JUSTICE are confusingly similar.

You know, they even try to distract you with this notion that I misrepresented something in my opening statements when I said that this survey of Mr. Berger's was paid $25,000. And then, of course, I pulled out his deposition when he told me it was 15 to $25,000. I didn't just make that up. I took it straight out of his deposition. The fact that it actually came to closer to 15,000, okay, I don't dispute that. He still was paid a lot. He and his

companies were paid a lot of money to render an opinion. It's another distraction.

Another one of these distractions, I mean, whether Mr. Norinsberg did or didn't try to buy 800-JUSTICE. Who cares? Okay. He didn't. Congratulations. It still doesn't have anything to do with whether you're infringing a trademark.

And then this distraction that, oh, 800-JUSTICE, you have no plans, you have no plans whatsoever to take this thing nationwide. I mean, that's -- I can't understand how anybody could conclude when they try to do a marketing plan and then they get -- this FCC stuff comes up. They have a website that specifically goes -- you remember it says for the U.S. This is for the U.S. Talk about a concrete plan, it's in writing. It's marketed to people that way. They signed up a marketing company to try to -- you remember the agreement with them to take this thing nationally. That's about as concrete as you get. A concrete plan doesn't mean you've been successful implementing it yet. It's awful hard to implement things when all your resources are going towards a lawsuit. Again, it was voluntary to file the lawsuit, but it still doesn't mean that the -- just because you have plans that you've been able to take it through yet.

I'm going to -- Mr. Norinsberg didn't call me last night on the phone, says, "Here's what I'm going to say during

closing arguments," but I can guarantee you 90 percent of his closing argument is going to be exactly the type of distractions that I told you about today. That's how confident I am that he's going to spray liquid and flap his wings and do all this kind of color-changing stuff so you can take your eye off the ball. He's not going to get up here and talk about how confusingly similar these trademarks -- well, he might now that he's heard me. But you understand what I'm saying here.

I know you took notes on a lot of these things and I know you've got to do that. You got to try to get to the bottom of things. But I want to now talk about the case, finally, since that's basically what the trial was about was something other than the case. But let's talk a little bit about the case.

Is this mark descriptive or suggestive? I think I admitted to you in opening statement -- I try to be a reasonable person not only in my personal life but even when I'm talking here in court. And I told you it was a close call. I said that. I didn't get up here and say, "We win no matter what." It wasn't my approach here at all. I think it is a close call and that we needed to see what the evidence was going to be in this case. Whether it's descriptive or generic is not what somebody who's not a lawyer happened to think about it at some time who doesn't even know what these

terms mean. That's not whether something is descriptive or suggestive. Suggestive is -- you've seen the instructions, but suggestive is some thought is required to come up with it and descriptive is more of an immediate thing; you know, you don't really need thought to determine what it is.

Now, I'm sure Mr. Norinsberg is going to cherry-pick some things out of Mr. McKenna's testimony. I'll have to do it on -- I'll get one more chance to talk to you at the end here if I have to cherry-pick my own parts out of it. But at the end of the day, Mr. McKenna called this case a close call.

Now, although Mr. Berger was hired by the defendants, I would like to posit to you and tell you that I think that Mr. Berger's survey and his testimony overwhelmingly supports that this mark is descriptive. He went to 250 folks, and after we take out his double-dipping and how he didn't give consideration to these why-did-you-say-law, let's just throw that into legal services and lawyer, oh-you-meant-Judge-Judy, that doesn't describe -- when somebody thinks of 1-800-JUSTICE they think of Judge Judy, that's not describing my client's services. Whether it was him or his company -- they got very cute with this. But when you take all that stuff out and actually do an honest interpretation, you get similar to my calculation, somewhere 57 percent of respondents did not automatically go to lawyer services when they think of 1-800-JUSTICE. They thought of

Justice Department and they thought of -- oh, the I-don't-know opinions don't count. Come on. I mean, that's the whole point of this, to determine what do you think. You know, I don't know what I think, which means they don't automatically think of lawyer services.

I think Mr. Berger's testimony -- and for Mr. Berger to even say that his conclusion was it's descriptive, he couldn't -- his definition of descriptive, he couldn't come up with one. He said Dollar Store. I don't -- regardless of Mr. Berger's opinion, the evidence that he -- the survey evidence that he brought into this case I think supports very overwhelmingly that in fact this mark is suggestive.

And, you know, it's not just the survey evidence, though, that I think supports that this mark is descriptive. I know Mr. Norinsberg is a good testifier -- he's a lawyer, I wouldn't expect anything less -- but the truth is, his actions out of court show that he also thought this mark was descriptive -- I mean suggestive. He filed five applications, each time claiming that he had trademark rights. He didn't file those applications thinking he didn't have trademark rights. He thought he did.

But even more than Mr. Norinsberg -- and I think what's so important in this case is that the Patent and Trademark Office consistently and overwhelmingly has determined over and over and over again that 800-JUSTICE,

(888) JUSTICE, (212) JUSTICE, (718) JUSTICE, TRIPLE-8 JUSTICE are not descriptive. The Patent and Trademark Office, the experts in the field, the lawyers who looked at these, they didn't just do it once. You could understand if somebody made a -- two people made a mistake once or twice, but it wasn't just those five people. Simple Justice, Power of Justice, You Have a Right to Justice, Justice for All, Justice for the Injured for Lawyers, Secret Justice. So now we're up to 12 different examiners at the Patent and Trademark Office, none of whom determined that this trademark was descriptive. The defendants basically want you to think that the PTO, the Patent and Trademark Office, got it wrong 12 different times.

Now, I told you Mr. McKenna said this case is a close call. Well, Mr. McKenna wasn't here to hear Mr. Berger's survey evidence which might impact his opinion. He did say when there is maybe an equal force between, you know, is it descriptive, is it not descriptive, the Court should not overrule the action of the Patent Office to whose care Congress has entrusted the preliminary determination as to whether a mark fulfills the requirements of the statute. In other words, when it's a close call, we're just going to ignore the Patent and Trademark Office?

Again, I'm not unreasonable. There are obviously people that hear 1-800-JUSTICE and think of law firms. There might even be a few of you that thought of law firms. That's

not what the evidence in this case is in terms of what level do you need to get at for a term to be considered descriptive. The answer isn't, you know, if 33 percent or 43 percent -- my math -- 43 percent say it's lawyer service and 57 percent say that it's not lawyer services, that doesn't mean it's descriptive. In fact, that means over a majority of people don't think it's descriptive.

Now, the other issue in this case is whether (888) JUSTICE and 800-JUSTICE are confusingly similar. And Mr. Norinsberg admitted on the stand, I don't think there's been much of a debate here that these are confusingly similar marks. But it's an important issue in the case because the two issues you need to decide are is this a valid trademark, is this a suggestive trademark, and, two, is there infringement going on? In other words, are these confusingly similar trademarks? We can talk about the four calls from Hawaii, but the bulk of the calls that came into 1-800-JUSTICE from states in which Mr. Norinsberg has licensees, that's where the numerous, numerous calls come in. You heard people asking for his licensee law firms on the phone. If that isn't confusion, I don't know what is.

I'm asking you to determine in this case that 1-800-JUSTICE is suggestive. That's what I'm asking you to do in this case. I'm asking you to ignore the distractions and I'm asking you to determine what I believe the evidence has

shown in this case. And then I'm asking you to award something that I think is fair. It's not my -- some lawyers will get out there and say, "You should give $2 million." You know, you hear these things on television, people spilling coffee and getting all kinds of millions of dollars. I started drinking coffee at McDonald's hoping maybe that I'd get -- but the truth is, I'm not asking you to get crazy here. I'm just asking you to be fair. The only numbers that were really involved in this case was the $37,000 that my client had to spend fielding these calls primarily for Mr. Norinsberg. There was some testimony about because of the -- because of the two marks being in Alabama, $155,000 in less profits that my client would have to get in Alabama. And then Mr. Norinsberg testified that he generated roughly $100,000 of his own.

Now, you'll see on the instructions it's my burden on Mr. Norinsberg's profits to come up with what the revenue is and that Mr. Norinsberg has the burden to come up with the specific expenses to see -- and Mr. Norinsberg didn't do that, so I don't really know what amount of that $100,000 is fair, but I leave it to you just to be fair. Those are the three kind of different numbers here. I'm asking you to award some type of damages against Mr. Norinsberg and his company for the infringement that's gone on in this case and for the confusion that's being caused in this case. (888) JUSTICE clearly

infringes 1-800-JUSTICE.

I thank you again for the time. I know this has been a long week for you all. I might get a few more minutes to speak to you after Mr. Norinsberg is done. Thank you.

(Closing argument of Mr. Norinsberg.)

MR. KASS: I only have 12 minutes, so there's a lot to cover.

You know, Mr. Norinsberg mentioned -- well, first of all, I think you saw a lot of the stuff that I said was going to happen. Why was Mr. Martin hired? Even though they took his deposition for four hours, why is -- and he asked him every question under the planet, why isn't Mr. Tafty here? This is another distraction. This is about whether this case is a suggestive trademark or not.

Mrs. Dobrauc is the cofounder to this company. She's the one who started this company and she's involved in this company day-to-day. It's not like there's no important person here on behalf of the company. They got to ask them questions.

Also completely kind of twisted Mr. McKenna's words around, the stuff that Mr. McKenna was talking about when asked, "Do you agree or disagree with that?" "I disagree with it," that's what he says. And then when he's asked, "Is it fair to say as far as consumer goes that the mark 1-800-JUSTICE is descriptive?" "That's not the conclusion

that I drew. And, you know, I think you'd want to see a survey." Well, of course there's no survey done. Mr. Berger's survey was sufficient to prove that this is not a descriptive trademark. Don't take my word for it or Mr. Norinsberg's word for it. I want you to just use your common sense like Mr. Norinsberg said.

And the whole point about whether it's suggestive or descriptive is what do consumers think, not does what does Mr. Tafty think in a deposition, not what did he tell his lawyers. That's not how a mark is determined descriptive. The mark is determined descriptive what do consumers think, what does the Patent and Trademark Office think. These are distractions.

And Mr. McKenna saying that he thought -- he could think of -- you could think of something related to law when you hear 1-800-JUSTICE. They didn't quote the parts where he says that could be the court reporter, that could be the courts. That's the whole point of this. That's the whole point of this.

The only instruction you're going to get in this case regarding 1-800 numbers is specifically this, and you've heard it: Is there just a mere licensing of the phone number or is it used as a trademark? There's plenty of evidence. He addressed the evidence when it's used as a phone number. And you remember the television commercials that I played for you

in court and you remember what I held up for you here just now. You've seen some of both. So it is used as both. There's no -- it's not only used as a phone number. And I think to say that just ignores the evidence.

Then this issue of abandonment. We discussed it so I'm not going to belabor the point but, again, this was an intent to use application. The FCC is determining whether they have a right to this phone number or not. He spent most of his time talking about evidence in the 1990s. He spent zero time talking about evidence in the 2003-plus period. I think that's telling.

I also think it's telling that in 45 minutes he mentioned (888) JUSTICE once. Once. Because that is trying to get you away from looking at the exact trademark that's the problem here. And, frankly, even if you were to get into these use issues, my client had 800-JUSTICE in 2003, a registration. He didn't buy (888) JUSTICE until 2004.

Mr. McKenna never even addressed the issue in his report or in his deposition, he wasn't even asked to, about what my client's plans were or were not plans to use this on a national basis. So when he talks about, you know, they've only used it in Springfield and this and they've only licensed it to these areas, that wasn't part of Mr. McKenna's charge.

I want to go back to what I said at the beginning, which is I want to try to focus this case. This case is about

whether this is a suggestive or descriptive trademark. It's not about bad lawyers, it's not about who you did or you didn't hire as an expert, it's not about Honduras, it's not about whether in the 1990s you had FCC issues yet there's an intent to use application. Again, he used the term intent to use application once in his entire 45 minutes, avoiding the real issues in this case.

I know this is a tough case. I know you've heard things going back and forth. I'm asking you to do the fair thing. I also don't know what you're going to do. I don't presume to know what's even in your head right now. But I'm asking you, I'm pleading with you to try to think about what's really important in this case and what is trying to be used as a distraction.

I really, really appreciate the time that you've given to us on behalf of both sides of the case. Again, it's a -- we're fortunate to live in a country where we have an opportunity to resolve our differences in this way. So I know you'll be conscientious and look at things, but I'm asking you to focus on the crux of this case.

Thank you so much.

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CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

_____ _____

Date Jeannine M. Rankin, CCR, CSR, RPR